A bill for an act

relating to health; establishing a voluntary statewide pool to provide health benefits to eligible members; providing for the administration and oversight of the pool; appropriating money; proposing coding for new law as Minnesota Statutes, chapter 62U.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **INTENT.**

The legislature finds that the creation of a voluntary statewide pool to provide public and private employers, individuals, and others with the advantages of a large pool for the purchasing of affordable, comprehensive, accessible, and high quality health benefits would advance the welfare of the citizens of the state.

Sec. 2. **[62U.01] DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of this chapter, the terms defined in subdivisions 2 to 11 have the meanings given them.

Subd. 2. **Cost-effective.** "Cost-effective" has the meaning given the term in section 62J.03.

Subd. 3. **Community rating.** "Community rating" means a rating methodology in which the premiums charged by the pool for all enrollees is the same based upon the experience of the entire pool of risks covered without regard to gender, health status, residence, or occupation.

Subd. 4. **Dependent.** "Dependent" means a spouse or unmarried child under the age of 25, or a dependent child of any age who is disabled.

Subd. 5. **Employee.** "Employee" means an employee of an eligible employer. Employee includes a sole proprietor, partner of a partnership, member of a limited liability company, or independent contractor.

Subd. 6. **Employer.** "Employer" means a private person, firm, corporation, partnership, limited liability company, association, or other entity actively engaged in business or public services. Employer includes both for-profit and nonprofit entities and the state of Minnesota and any political subdivision of the state.

Subd. 7. **Guaranteed issue.** "Guaranteed issue" means that the pool must not decline an application for coverage by an employer, individual, or other pool and must not decline to provide coverage in the pool to those eligible for coverage after initial issuance of coverage in the pool.

Subd. 8. **Health benefits.** "Health benefits" means benefits which pay the cost of medical, surgical, hospital, or dental care, and pharmacy benefits offered by the pool to eligible members of the pool.

Subd. 9. **Health care provider.** "Health care provider" has the meaning given in section 62J.70, subdivision 2.

Subd. 10. **Individual.** "Individual" means a person eligible to participate in the pool under the terms established according to section 62U.08.

Subd. 11. **Pool.** "Pool" means the Minnesota health benefits purchasing pool created by this chapter.

Sec. 3. **[62U.02] MINNESOTA HEALTH BENEFITS PURCHASING POOL ASSOCIATION.**

Subdivision 1. **Creation.** The Minnesota Health Benefits Purchasing Pool Association may operate as a nonprofit unincorporated association, but is authorized to incorporate under chapter 317A. All covered lives enrolled in the pool are members of the association.

Subd. 2. **Purpose.** The association is created to establish and administer the Minnesota health benefits purchasing pool consistent with the provisions of this chapter.

Subd. 3. **Exemptions.** The association, its transactions, and all property owned by it are exempt from taxation under the laws of this state or any of its subdivisions, including, but not limited to, premiums taxes imposed under chapter 297I, income tax, sales tax, use tax, and property tax. The association may seek exemption from payment of all fees and taxes levied by the federal government. Except as otherwise provided in this chapter, the association is not subject to the provisions of chapters 13, 13D, 60A, and 62A to 62H. The association is not a public employer and is not subject to the provisions of chapters 179A

and 353. The association and the board of directors are exempt from sections 325D.49 to 325D.66 in the performance of their duties as directors of the association.

Subd. 4. **Powers of association.** The association may exercise all of the powers of a corporation formed under chapter 317A, including, but not limited to, the authority to:

(1) establish operating rules, conditions, and procedures relating to the provision of health benefits offered by the pool to eligible members of the pool, including reasonable temporary enrollment restrictions and other temporary coverage restrictions deemed necessary by the association to ensure the pool's financial health;

(2) impose a membership fee on the terms the board determines are appropriate;

(3) establish procedures consistent with the requirements of this chapter and the needs of the association that promote public access and accountability, including public notice and open meeting procedures, and procedures that allow reasonable public access to information created or maintained by the association;

(4) sue and be sued;

(5) enter into contracts necessary to carry out the provisions of this chapter;

(6) establish operating, administrative, and accounting procedures for the operation of the pool; and

(7) borrow money against the future receipt of premiums.

The provisions of this chapter govern if the provisions of chapter 317A conflict with this chapter. The association shall operate under the plan of operation approved by the board and shall be governed in accordance with this chapter and may operate in accordance with chapter 317A. If the association incorporates as a nonprofit corporation under chapter 317A, the filing of the plan of operation meets the requirements of filing articles.

Subd. 5. **Review and approval of policy forms, contracts, and premiums.** The association's policy forms, contracts, and premium rates are subject to the approval of the commissioner of commerce on the same terms and subject to the same conditions as a carrier regulated under chapters 62A, 62C, and 62D. The association shall notify the commissioner of all association or board meetings, and the commissioner or the commissioner's designee may attend all association or board meetings. The association shall file an annual report with the commissioner on or before July 1 of each year, beginning July 1, 2009, describing its activities during the preceding calendar year. The report must include a financial report and a summary of claims paid by the association. The annual report must be available for public inspection.

Sec. 4. **[62U.03] BOARD OF DIRECTORS.**

Subdivision 1. **Composition of board.** (a) The association shall exercise its powers through a board of 15 directors. Five directors shall be employers who are members of the association; five directors shall be individuals who are members of the association; and five directors shall be health care providers elected from a slate, established by the administrator, that is representative of health care providers from all geographic areas of the state. No more than seven of the directors so appointed may be residents of the seven-county metropolitan area.

(b) The board shall include the following ex officio, nonvoting directors:

(1) one director appointed by the governor;

(2) two directors of the house of representatives, one from the majority caucus and one from the minority caucus, appointed by the speaker of the house of representatives;

(3) two directors of the senate, one from the majority caucus and one from the minority caucus, appointed by the Subcommittee on Committees of the Committee on Rules and Administration.

The terms of these ex officio directors shall be three years and no director may serve more than two consecutive terms.

(c) The following employees of the association are also ex officio, nonvoting directors of the board: the administrator, an actuary, a legal advisor, and the enrollee ombudsman.

Subd. 2. **Appointment of board.** The members of the association shall elect the board of directors in accordance with this chapter and the plan of operation.

Subd. 3. **Term of office.** Each director shall serve a three-year term, except that the board shall make appropriate arrangements to stagger the terms of the directors so that approximately one-third of the terms expire each year. Each director shall hold office until expiration of the director's term or until the director's successor is duly appointed and qualified, or until the director's death, resignation, or removal. A director may not serve for more than two consecutive terms.

Subd. 4. **Resignation.** A director may resign at any time by giving written notice to the board. The resignation takes effect at the time the resignation is received unless the resignation specifies a later date. If a vacancy occurs for a director, the board shall appoint a new director for the duration of the unexpired term.

Subd. 5. **Quorum.** A majority of the voting directors constitutes a quorum for the transaction of business. If a vacancy exists by reason of death, resignation, or otherwise, a majority of the remaining voting directors constitutes a quorum.

Subd. 6. **Duties of directors.** The board shall develop a plan of operation and reasonable operating rules to assure the fair, reasonable, and equitable administration of the

pool. The plan of operation must include the development of procedures and the coverage options to be offered by the pool that are consistent with this chapter. The plan of operation must be submitted to the members for approval at the first meeting of the members. The board of directors may subsequently amend, change, or revise the plan of operation.

Subd. 7. **Officers.** The board may elect officers and establish committees as provided in the bylaws of the association. Officers have the authority and duties in the management of the association as prescribed by the bylaws and determined by the board of directors.

Subd. 8. **Majority vote.** Approval by a majority of the directors present is required for any action of the board.

Sec. 5. **[62U.04] MEMBERS.**

Subdivision 1. **Annual meeting.** The association shall conduct an annual meeting of the members of the association for the purpose of electing directors and transacting any other appropriate business of the membership of the association. The board shall determine the date, time, and place of the annual meeting.

Subd. 2. **Special meetings.** Special meetings of the members must be held whenever called by any five of the directors or upon a petition signed by 25 percent of the members of the association. Special meetings of the members must be held at a time and place designated in the notice of the meeting.

Subd. 3. **Member compliance.** All members shall comply with the provisions of this chapter, the association's bylaws, the plan of operation developed by the board of directors, and any other operating, administrative, or other procedures established by the board of directors for the operation of the association.

Sec. 6. **[62U.05] ADMINISTRATION OF POOL.**

Subdivision 1. **Administrator.** The board shall hire a qualified person to operate and administer the pool. The administrator shall perform all administrative functions required by this chapter. The board of directors shall develop administrative functions required by this chapter and written criteria for the selection of an administrator.

Subd. 2. **Duties of administrator.** (a) The administrator shall perform all functions required by this chapter including:

(1) hiring employees, including actuaries, legal personnel, and an enrollee ombudsman;

(2) preparing and submitting an annual report to the association;

(3) preparing and submitting monthly reports to the board of directors;

(4) paying claims to health care providers following the submission by health care providers of acceptable claim documentation; and

(5) providing claim reports to health care providers as determined by the board of directors.

(b) The administrator shall assist the board in developing the coverage options and the premium rates for the pool.

Subd. 3. **Records of association.** The administrator shall maintain appropriate records and documentation relating to the activities of the association. All individual patient-identifying claims data and information are confidential and not subject to disclosure of any kind. All records, documents, and work product prepared by the association or by the administrator for the association are the property of the association. The commissioner of commerce shall have access to the data for the purposes of carrying out the commissioner's duties under section 62U.02, subdivision 5.

Subd. 4. **Indemnification.** The association shall indemnify directors, officers, employees, and agents to the same extent that persons may be indemnified by corporations under section 317A.521.

Sec. 7. **[62U.06] EMPLOYER ELIGIBILITY.**

Subdivision 1. **Procedures.** All employers are eligible for coverage through the pool subject to the terms of this section. The association shall establish procedures for an employer to apply to, become enrolled in, obtain coverage from, and withdraw from, the pool.

Subd. 2. **Term.** The initial term of an employer's coverage shall be established by the association. After that, coverage will be automatically renewed for an additional term unless the employer gives notice of withdrawal from the pool according to procedures established by the association or the association gives notice to the employer of the discontinuance of the pool. The association may establish conditions under which an employer may withdraw from the pool before expiration of a term, and conditions under which the employer may reapply for coverage. An employer that withdraws from the pool may not reapply for coverage for a period of time equal to its initial term of coverage.

Subd. 3. **Minnesota work force.** An employer is not eligible for coverage through the pool if five percent or more of its eligible employees work primarily outside Minnesota, except that an employer may apply to the pool on behalf of only those employees who work primarily in Minnesota.

Subd. 4. **Employee participation; aggregation of groups.** An employer is not eligible for coverage through the pool unless its application includes all eligible employees

who work primarily in Minnesota, except employees who waive coverage as permitted by section 62U.07, subdivision 4. Private entities that are eligible to file a combined tax return for purposes of state tax laws are considered a single employer, except as otherwise approved by the association.

Subd. 5. **Private employer.** A private employer is not eligible for coverage unless it has two or more eligible employees in the state of Minnesota. If an employer has only two eligible employees and one is the spouse, child, sibling, parent, or grandparent of the other, the employer must be a Minnesota domiciled employer and have paid Social Security or self-employment tax on behalf of both eligible employees.

Sec. 8. **[62U.07] EMPLOYEE ELIGIBILITY.**

Subdivision 1. **Procedures.** The association shall establish procedures for employees and other eligible individuals to apply to, become enrolled in, obtain coverage from, and withdraw from, the pool.

Subd. 2. **Employees.** The association shall determine, when an employer applies to the pool, the criteria its employees must meet to be eligible for coverage under its plan. The criteria must provide that all employees are eligible for coverage unless the association establishes otherwise, and that new employees must elect coverage within 90 days of the start of their employment.

Subd. 3. **Other dependents and individuals.** The association may elect to cover:

(1) the spouse, dependent children, and dependent grandchildren of a covered employee;

(2) a retiree who is eligible to receive a pension or annuity from the employer and a covered retiree's spouse, dependent children, and dependent grandchildren;

(3) the surviving spouse, dependent children, and dependent grandchildren of a deceased employee or retiree, if the spouse, children, or grandchildren were covered at the time of the death;

(4) a covered employee who becomes disabled, as provided in sections 62A.147 and 62A.148; or

(5) any other categories of individuals for whom group coverage is required by state or federal law.

Subd. 4. **Waiver and late entrance.** An eligible individual may waive coverage at the time the employer joins the pool or when coverage first becomes available. The association may establish a preexisting condition exclusion of not more than 18 months for late entrants.

Sec. 9. **[62U.08] INDIVIDUAL ELIGIBILITY.**

All individuals in the state are eligible for coverage through the pool subject to the terms established by the association. The association shall establish procedures for individuals to apply to, become enrolled in, obtain coverage from, and withdraw from, the pool.

Sec. 10. **[62U.09] OTHER POOL ELIGIBILITY.**

Subdivision 1. **Procedures.** All mandatory or voluntary health care pools operating in the state are eligible for coverage through the pool subject to the terms of this section. The association shall establish procedures for a pool to apply to, become enrolled in, obtain coverage from, and withdraw from, the pool.

Subd. 2. **Term.** The initial term of a pool's coverage shall be established by the association. After that, coverage will be automatically renewed for an additional term unless the enrollee pool gives notice of withdrawal from the pool according to procedures established by the association or the association gives notice to the enrollee pool of the discontinuance of the pool. The association may establish conditions under which the enrollee pool may withdraw from the pool before expiration of a term, and conditions under which the enrollee pool may reapply for coverage. An enrollee pool that withdraws from the pool may not reapply for coverage for a period of time equal to its initial term of coverage.

Sec. 11. **[62U.10] COVERAGE.**

Subdivision 1. **Generally.** Subject to any temporary enrollment and other temporary restrictions established by the association, coverage through the pool must be made available on a guaranteed issue basis. No more than three coverage options may be offered through the pool. The association shall provide coverage through contracts directly with health care providers. The association may charge all members a fee for administrative purposes.

Subd. 2. **Health benefits.** (a) The association shall establish health benefits that:

(1) have strong care management features to control costs and promote quality including: (i) financial incentives for patients, in appropriate situations, to select a care coordinator who will coordinate health care services across the continuum of care; and (ii) coverage for cost-effective services, including the use of cost-effective disease management programs;

(2) provide reimbursement to health care providers for the full cost of each health service provided;

(3) promote enrollee wellness and education;

(4) are available in all the geographic areas of the state; and

(5) remove or reduce barriers for enrollees to get needed services.

(b) Health coverage for a retiree who is eligible for the federal Medicare program must be administered as though the retiree is enrolled in Medicare parts A and B.

(c) To the extent feasible as determined by the association and in the best interests of the pool, the association shall model coverage after the coverage provided pursuant to section 43A.23, subdivision 2. Health benefits must include at least the benefits required of a carrier regulated under chapter 62A, 62C, or 62D for comparable coverage.

Subd. 3. **Continuation coverage.** The pool shall provide all continuation coverage required by state and federal law.

Subd. 4. **Technical assistance.** The association may arrange for technical assistance and referrals for enrollees in areas such as health promotion and wellness, employee benefits structure, tax planning, and health care analysis services as described in section 62J.2930.

Sec. 12. **[62U.11] PREMIUMS.**

Subdivision 1. **Payments.** Employers, individuals, and other pools enrolled in the pool shall pay premiums according to terms established by the association. If an employer, individual, or other pool fails to make the required payments, the association may cancel coverage and pursue other civil remedies.

Subd. 2. **Rating method.** The association shall determine the premium rates and use community rating in setting the premium rates. The premium rates may vary depending on the ages of enrollees. The association must recover in premiums all of the ongoing costs for administration and for maintenance of premium stability and claim fluctuation reserve.

Subd. 3. **Taxes and assessments.** The premiums paid to the pool are not subject to the taxes imposed by chapter 297I, and the pool is not subject to a Minnesota Comprehensive Health Association assessment under section 62E.11.

Sec. 13. **[62U.12] MINNESOTA HEALTH BENEFITS PURCHASING POOL RESERVES.**

The association shall establish and maintain adequate reserves:

(1) for claims in process, incomplete and unreported claims, premiums received but not yet earned, and all other accrued liabilities; and

(2) to ensure premium stability and the timely payment of claims in the event of adverse claims experience.

Sec. 14. **[62U.13] STATUS OF AGENTS.**

Notwithstanding sections 60K.49 and 72A.07, the pool may use, and pay referral fees, commissions, or other compensation to, agents licensed as insurance producers under chapter 60K.

Sec. 15. **APPOINTMENT OF INITIAL BOARD.**

The health plan purchasing pool study group, as constituted on the day it expired pursuant to Laws 2007, chapter 147, article 12, section 15, is revived the day following final enactment of this section for the sole purpose of appointing the initial board of directors of the Minnesota Health Benefits Purchasing Pool Association. Notwithstanding Minnesota Statutes, section 62U.03, the health plan purchasing pool study group shall appoint an initial board of directors consisting of 15 members. The study group shall appoint five members who are employers in the state, five members who are individuals residing in the state, and five members who are health care providers in the state. No more than seven directors may be appointed from the seven-county metropolitan area. Two-thirds of the membership of the study group must vote in favor of each appointment made under this section. Initial appointments to the board must be made by August 1, 2008. The initial board shall serve until the pool begins operation, but in no event may the term of this initial board exceed two years. Minnesota Statutes, section 62U.03, subdivisions 4, 5, 6, 7, and 8, apply to the initial board from the date of its appointment. The initial board of directors shall hire an administrator and prepare a plan of operation that allows the pool to begin offering coverage as soon as practicable. The initial coverage options and the premium rates must be established with the assistance of the administrator and presented to the board for approval. The association may initially limit enrollment, coverage options, and availability of coverage in certain geographic areas of the state and to certain individuals or groups, and impose other restrictions that are necessary to ensure that the pool is actuarially sound.

Sec. 16. **APPROPRIATIONS.**

Subdivision 1. **General fund.** $..... is appropriated from the general fund to the Minnesota Health Benefits Purchasing Pool Association for the purposes of this act. This appropriation is effective the day following final enactment and is available until expended. It is intended that the association repay this appropriation when the association determines that it has the financial resources to do so without jeopardizing the financial stability of the pool.

Subd. 2. **Health care access fund.** A sum sufficient but not exceeding $..... is appropriated from the health care access fund to the Minnesota Health Benefits Purchasing Pool Association to establish adequate initial reserves to allow the association to begin offering coverage in the pool on the limited basis as authorized under section 16. The appropriation is available until expended. It is intended that the association repay the health care access fund the amount appropriated under this section when the association determines that it possesses the financial resources to do so without jeopardizing the financial stability of the pool.